

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

CAROLYN R. DOUGLAS

Claimant

VS.

THE BOEING COMPANY

Respondent

AND

INS. CO. STATE OF PENNSYLVANIA c/o

AMERICAN INTERNATIONAL GROUP

Insurance Carrier

)
)
)
)
)
)
)
)
)
)

Docket No. 231,378

ORDER

Respondent appeals from a preliminary hearing Order entered by Administrative Law Judge Jon L. Frobish on March 31, 1998.

ISSUES

Claimant alleges repetitive use injuries to her bilateral upper extremities each and every working day beginning September 1996. Respondent denies claimant has suffered a new injury. Respondent argues that claimant's current problems are the natural and probable consequence of an earlier injury, which was the subject of a prior claim. The issue for Appeals Board review is whether claimant has sustained a new injury that arose out of and in the course of her employment with the respondent.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

For the reasons explained below, the Appeals Board concludes that, based upon the record provided, claimant has met her burden of proving a new repetitive use injury from her work activity with respondent since her return to work on August 22, 1996. The Appeals Board also affirms the Administrative Law Judge's finding to the effect that if claimant has not missed work due to this injury, her accident date should be considered as the date she received additional restrictions from the authorized treating physician.

The relevant circumstances begin with an earlier workers compensation claim by claimant against this respondent in Docket No. 186,104 for an accident date of June 1992 through February 9, 1993. That claim was settled by a lump sum compromise settlement on April 11, 1994. That claim included the payment of 61 weeks of temporary total disability compensation for the period February 10, 1993, through March 11, 1994. Claimant was released to return to work on May 4, 1993, but was laid off. That layoff continued until August 22, 1996, when claimant returned to work for respondent.

On September 26, 1996, claimant sustained a crush injury to her right middle finger. That injury is the subject of a separate claim with a Docket No. 225,229. Claimant testified that following the injury to her right middle finger, she altered the way she performed her work, including overcompensating for her injured right hand by using her left hand more. Claimant thereafter began experiencing problems with both upper extremities. She was returned to orthopedic surgeon Bernard F. Hearon, M.D., who diagnosed ulnar nerve entrapment at the elbow or cubital tunnel syndrome. In a letter dated November 10, 1997, Dr. Hearon opined that claimant's right ulnar nerve entrapment is a work-related problem and that the repetitive nature of claimant's work may be aggravating the problems she is experiencing with both upper extremities.

Respondent argues that claimant's current problems are a natural and probable consequence of the injuries contained within Docket No. 186,104. Support for this position lies in a September 25, 1997, opinion by Dr. Ernest R. Schlachter. But what Dr. Schlachter considers connected from a medical viewpoint may not necessarily be treated as a single accidental injury from a legal viewpoint for purposes of workers compensation. Claimant presented symptoms of ulnar paraesthesia when Dr. Schlachter examined her on May 25, 1993. At that time, Dr. Schlachter, who was not the authorized treating physician, recommended restrictions of no repetitive pushing, pulling, twisting, or grasping motions with either arm or hand as well as no use of vibratory tools or working in cold environments. Also, claimant should avoid repetitive lifting of no more than 10 pounds with either arm or hand on a repetitive basis or 20 pounds on a single basis. The treating physician at that time, Dr. Harry A. Morris, released claimant to return to work in May of 1993 with no permanent impairment or disability rating but "[t]he limitations for work would be the same permanent restrictions that she already has." Unfortunately, the office notes attached as respondent's Exhibit 1 to the March 31, 1998, Preliminary Hearing Transcript do not contain those permanent restrictions given by Dr. Morris.

Claimant testified that when she returned to work with the respondent in August 1996, she was given a pre-employment physical and her restrictions were changed. Although she did not recall precisely what restrictions were given at that time, she did recall that the restriction against lifting over 10 to 15 pounds was removed, but not completely.

Claimant testified that she worked at other jobs during the period from May 5, 1993, through August 21, 1996, when she was laid off from her job with respondent. During this time, her bilateral upper extremity problems subsided. Also, claimant received no medical

treatment during the period she was laid off. Upon her return to work with respondent, however, her symptoms returned. She testified that the repetitive nature of her work with respondent caused her bilateral arm problems to worsen to the point where surgery was recommended. In February 1998, claimant was given new restrictions against grasping, grabbing, and repetitive motion. Also, when working on the computer, she is to stop and rest for 10 minutes every hour. Claimant describes her symptoms now as being different from the symptoms she experienced in her upper extremities in 1993. Furthermore, claimant had nerve conduction studies performed in 1993 that were negative whereas the nerve conduction study performed by Dr. Lawrence Blaty on December 11, 1996, was positive for ulnar nerve entrapment.

For these reasons, the Appeals Board finds that claimant has suffered new injuries to her upper extremities during the period alleged, specifically, September 1996 and each and every working day thereafter.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order of March 31, 1998, entered by Administrative Law Judge Jon L. Frobish should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of June 1998.

BOARD MEMBER

c: David M. Bryan, Jr., Wichita, KS
Eric K. Kuhn, Wichita, KS
Jon L. Frobish, Administrative Law Judge
Philip S. Harness, Director